

111TH CONGRESS
1ST SESSION

S. 1285

AN ACT

To provide that certain photographic records relating to the treatment of any individual engaged, captured, or detained after September 11, 2001, by the Armed Forces of the United States in operations outside the United States shall not be subject to disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), to amend section 552(b)(3) of title 5, United States Code (commonly referred to as the Freedom of Information Act) to provide that statutory exemptions to the disclosure requirements of that Act shall specifically cite to the provision of that Act authorizing such exemptions, to ensure an open and deliberative process in Congress by providing for related legislative proposals to explicitly state such required citations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DETAINEE PHOTOGRAPHIC RECORDS PROTEC-**
 4 **TION.**

5 (a) SHORT TITLE.—This section may be cited as the
 6 “Detainee Photographic Records Protection Act of 2009”.

7 (b) DEFINITIONS.—In this section:

8 (1) COVERED RECORD.—The term “covered
 9 record” means any record—

10 (A) that is a photograph that—

11 (i) was taken during the period begin-
 12 ning on September 11, 2001, through Jan-
 13 uary 22, 2009; and

14 (ii) relates to the treatment of individ-
 15 uals engaged, captured, or detained after
 16 September 11, 2001, by the Armed Forces
 17 of the United States in operations outside
 18 of the United States; and

19 (B) for which a certification by the Sec-
 20 retary of Defense under subsection (c) is in ef-
 21 fect.

22 (2) PHOTOGRAPH.—The term “photograph” en-
 23 compasses all photographic images, whether origi-
 24 nals or copies, including still photographs, negatives,

1 digital images, films, video tapes, and motion pic-
2 tures.

3 (c) CERTIFICATION.—

4 (1) IN GENERAL.—For any photograph de-
5 scribed under subsection (b)(1)(A), the Secretary of
6 Defense shall certify, if the Secretary of Defense, in
7 consultation with the Chairman of the Joint Chiefs
8 of Staff, determines that the disclosure of that pho-
9 tograph would endanger —

10 (A) citizens of the United States; or

11 (B) members of the Armed Forces or em-
12 ployees of the United States Government de-
13 ployed outside the United States.

14 (2) CERTIFICATION EXPIRATION.—A certifi-
15 cation submitted under paragraph (1) and a renewal
16 of a certification submitted under paragraph (3)
17 shall expire 3 years after the date on which the cer-
18 tification or renewal, as the case may be, is sub-
19 mitted to the President.

20 (3) CERTIFICATION RENEWAL.—The Secretary
21 of Defense may submit to the President—

22 (A) a renewal of a certification in accord-
23 ance with paragraph (1) at any time; and

24 (B) more than 1 renewal of a certification.

1 (4) NOTICE TO CONGRESS.—A timely notice of
2 the Secretary’s certification shall be submitted to
3 Congress.

4 (d) NONDISCLOSURE OF DETAINEE RECORDS.—A
5 covered record shall not be subject to—

6 (1) disclosure under section 552 of title 5,
7 United States Code (commonly referred to as the
8 Freedom of Information Act); or

9 (2) disclosure under any proceeding under that
10 section.

11 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion shall be construed to preclude the voluntary disclosure
13 of a covered record.

14 (f) EFFECTIVE DATE.—This section shall take effect
15 on the date of enactment of this Act and apply to any
16 photograph created before, on, or after that date that is
17 a covered record.

18 **SEC. 2. OPEN FREEDOM OF INFORMATION ACT.**

19 (a) SHORT TITLE.—This section may be cited as the
20 “OPEN FOIA Act of 2009”.

21 (b) SPECIFIC CITATIONS IN STATUTORY EXEMP-
22 TIONS.—Section 552(b) of title 5, United States Code, is
23 amended by striking paragraph (3) and inserting the fol-
24 lowing:

1 “(3) specifically exempted from disclosure by
2 statute (other than section 552b of this title), if that
3 statute—

4 “(A)(i) requires that the matters be with-
5 held from the public in such a manner as to
6 leave no discretion on the issue; or

7 “(ii) establishes particular criteria for
8 withholding or refers to particular types of mat-
9 ters to be withheld; and

10 “(B) if enacted after the date of enactment
11 of the OPEN FOIA Act of 2009, specifically
12 cites to this paragraph.”.

Passed the Senate June 17, 2009.

Attest:

Secretary.

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